

APR 21 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN JENKINS,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 07-73621

Tax Ct. No. 9232-06L

MEMORANDUM *

Appeal from a Decision of
the United States Tax Court

Submitted April 13, 2009**

Before: GRABER, GOULD and BEA, Circuit Judges.

John Jenkins appeals pro se the Tax Court's order denying his motion to vacate the Tax Court's dismissal for failure to prosecute his petition for redetermination of income tax deficiencies asserted against him by the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Commissioner of Internal Revenue for tax year 2002. We have jurisdiction under 26 U.S.C. § 7482. We review for abuse of discretion the Tax Court's dismissal for failure to prosecute, *Noli v. Commissioner*, 860 F.2d 1521, 1527 (9th Cir. 1988), and denial of a motion to vacate, *Thomas v. Lewis*, 945 F.2d 1119, 1123 (9th Cir. 1991). We affirm.

The Tax Court did not abuse its discretion in dismissing Jenkins' case due to failure to prosecute after the Tax Court warned him that if he failed to appear for trial, the petition might be dismissed. *See* Tax Ct. R. 123(b); *Noli*, 860 F.2d at 1527. The Tax Court also did not abuse its discretion in denying Jenkins' motion to vacate the dismissal of the petition. *See Thomas*, 945 F.2d at 1123 (court did not err in denying motion to vacate where movant presented no arguments which the court had not already considered).

AFFIRMED.